

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

DERRICK EUGENE KIRTMAN,)
)
Plaintiff,)
)
) No. CIV-16-386-HE
v.)
)
MARGARET GRISMER, et al.,)
)
Defendants.)

REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing *pro se*, filed this action pursuant to 42 U.S.C. §1983. On April 19, 2016, the matter was referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B).

On April 20, 2016, the undersigned entered an Order to Plaintiff to Cure Deficiency advising Plaintiff that he had failed to either submit an application seeking leave to proceed *in forma pauperis* or pay the required filing fee and giving Plaintiff until May 9, 2016, to cure this deficiency. Plaintiff was also advised that his failure to comply with the Order could result in the dismissal of his action without prejudice.

To this date, Plaintiff has not responded to the Court's Order. He has not complied with the Court's Order by either paying the required filing fee or submitting an application seeking leave to proceed *in forma pauperis* in this action. Nor has he requested an extension of time to comply with the Court's Order.

The undersigned finds that Plaintiff's failure to comply with this Court's Order, together with the Court's right and responsibility to manage and control its case load, warrants dismissal of this action without prejudice. See Nasious v. Two Unknown B.I.C.E. Agents, 492 F.3d 1158, 1161 n. 2, 1162 (10th Cir. 2007)(noting the court applies Fed. R. Civ. P. 41(b) to allow *sua sponte* dismissal for "failure to . . . comply with the rules of civil procedure or court's orders")

RECOMMENDATION

Based on the foregoing findings, it is recommended that Plaintiff's cause of action be DISMISSED without prejudice. Plaintiff is advised of the right to file an objection to this Report and Recommendation with the Clerk of this Court by _____ June 7th, 2016, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72(b). The failure to timely object to this Report and Recommendation would waive appellate review of the recommended ruling. Moore v. United States, 950 F.2d 656 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter, and any pending motion not specifically addressed herein is denied.

ENTERED this 18th day of _____ May, 2016.


GARY M PURCELL
UNITED STATES MAGISTRATE JUDGE